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FILE NO

By HandMr. Jeffrey Dygert
Assistant Bureau Chief
~~Common~~ Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554**Verizon Arbitrations
CC Docket No. 00-218 et al.**

Dear Mr. Dygert:

In light of Verizon's pending Petition for Clarification and Reconsideration, I write to bring your attention to numerous state arbitration decisions issued after Verizon filed its Petition that support Verizon's position on Issue 1-6 (compensation for virtual NXX traffic). Those decisions are enclosed.

In its *Local Competition Order*, the FCC ruled that reciprocal compensation under the Act "do[es] not apply to the transport or termination of interstate or intrastate interexchange traffic." The FCC confirmed this result in its April 2001 *ISP Order on Remand*, in which it held that reciprocal compensation does not apply to "exchange access, information access, and exchange services for such access."² The FCC has made clear that this exclusion covers all interexchange communications: whenever a LEC provides service "in order to connect calls

¹ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499 ¶ 1034 (1996) ("*Local Competition Order*") (subsequent history **omitted**).

In the Matter of Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, 16 FCC Rcd. 9151, ¶ 36 (2001) ("*ISP Order on Remand*") (citing 47 U.S.C. § 251(g)), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

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that travel to points – both interstate and intrastate – beyond the local exchange,” it is providing an access service.³ Virtual NXX traffic is, by definition, interexchange traffic. Virtual NXX calls always “travel to points—both interstate and intrastate—beyond the local exchange.” Therefore, they fall outside the scope of reciprocal compensation.⁴

Notwithstanding the fact that the FCC has specifically considered and rejected the notion of basing intercarrier compensation on the assigned NPA-NXXs rather than actual geographic end points of a call,⁵ the Bureau ruled that interexchange, virtual NXX calls should be subject to reciprocal compensation.⁶ The Bureau reached its decision to require the carriers to base intercarrier compensation on assigned NPA-NXXs rather than geographical end points solely because it concluded that “rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.”

As the enclosed decisions indicate, the overwhelming number of state commissions that have considered the same issue recently have concluded that implementation issues provide no roadblock to requiring carriers to base intercarrier compensation on geographical end points.⁷ Those recent state commission decisions are highlighted below.

³ *Id.* ¶ 37.

⁴ *Id.*

⁵ See also *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 17 FCC Rcd. 15,135(2002), *aff’d*, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, Mem. Op. and Order, 17 FCC Rcd. 2091 (2002); *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd. 556 ¶ 71 (1998), *recon. denied*, 15 FCC Rcd. 7467 (2000).

⁶ Memorandum Opinion and Order released by the Wireline Competition Bureau on July 17, 2002, ¶ 301 (“*Virginia Arbitration Order*”).

⁷ *Id.* ¶ 301

⁸ One possible exception may be *In the Matter of Petition of Global NAPs North Carolina, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish An Interconnection Agreement with Verizon South, Inc.*, Docket No. P-1141, SUB 1 (rel. Nov. 27, 2002) (“*Verizon/Global NC Rec. Arb. Order*”). The *Verizon/Global NC Rec. Arb. Order*, which is not a final decision of the North Carolina Utilities Commission, recommends following the result reached in the *Virginia Arbitration Order*.

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- ***Global/VZ VT Order (12/26/02):***⁹ The *Global/VZ VT Order* prohibits Global from using virtual NXX assignments as a means to avoid toll charges, requiring that calls continue to be rated based upon their actual termination point, rather than a location designation that does not match the physical location. The Vermont Public Service Board observes: “VNXX is an artificial service that takes advantage of the manner in which NXX codes are assigned as a means to avoid toll charges and is essentially a form of price arbitrage.” *Id.* at **21**.
- ***Global/VZ MA Order (12/12/02):***¹⁰ The *Global/VZ MA Order* required intercarrier compensation to be based on geographic end points of a call and not the assigned telephone number. With respect to implementation, the Massachusetts Department charged the party interested in making virtual NXX assignments with responsibility for maintaining proper intercarrier compensation: “[A]n initial difficulty in implementation is not sufficient reason to forfeit any hope of the eventual proper rating of these calls. Indeed, when a carrier seeks to offer a service that complicates enforcement of the existing access regime, it is appropriate to require that carrier to work cooperatively with other carriers involved to ensure that the other carriers are duly compensated for their roles in carrying the traffic generated as a result of that service . . . If [the CLEC] cannot ensure that all LECs, including Verizon, have access to the geographic end point data necessary to properly rate a call as local or toll, and are properly compensated, then [the CLEC] cannot provide virtual NXX service to its customers.” *Id.* at 35-36 (footnote omitted).
- ***Global/VZ RI Order (10/16/02):***¹¹ The *Global/VZ RI Order* finds that if Global provides virtual NXX service, it must pay Verizon the applicable access charges and it may not subject such traffic to reciprocal compensation. According to the Rhode Island Commission, “GNAPs’ VNXX proposal is similar to its local calling area proposal in

⁹ *Petition of Global NAPs, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc., d/b/a Verizon Vermont*, Final Order, Vermont Public Service Commission, Docket No. 6742 at 21-24 (Dec. 26, 2002).

¹⁰ *Petition of Global NAPs, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, Decision and Order, Massachusetts D.T.E. 02-45 at 35-36 (Dec. 12, 2002).

¹¹ *In re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon Rhode Island*, Arbitration Decision, State of Rhode Island and Providence Plantations Public Utilities Commission, Docket No. 3437 at 24 (rel. Oct. 16, 2002).

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that it results in GNAPS receiving reciprocal compensation while preventing VZ-RI from receiving access charges for geographically non-local calls.” *Id.* at 24.

- ***FL Order On Reciprocal Compensation (9/10/02):***¹² The Florida Commission concluded that, as a matter of federal law, “calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation.” *Id.* at 33. The Florida Commission, moreover, observed that access charges appeared to be the appropriate form of compensation. It observed: “[a]lthough presently in the industry switches do look at the NPA/NXXs to determine if a call is local or toll, we believe this practice was established based upon the understanding that NPA/NXXs were assigned to customers within the exchanges to which the NPA/NXXs are homed. . . . However, this presumption may no longer be valid in an environment where NPA/NXXs are disassociated from the rate centers to which they are homed. . . . [I]ntercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls.” *Id.* at 30, 33.
- ***Global/VZ IL Order (10/1/02):***¹³ The *Global/VZ IL Order* found reciprocal compensation inapplicable to virtual NXX calls, instead ordering the parties to “bill and keep” this traffic. The Illinois Commission observed that “Verizon presently places toll charges on the pertinent interexchange traffic and would continue to do so, absent Global’s effort to make such toll charges inapplicable. Moreover, the final destination of FX-like traffic is, by its very nature, beyond the caller’s LCA, with virtual NXX being simply a device to relieve the caller of toll charges. A virtual NXX or FX-like number assignment is a service provided by the customer’s LEC and should not be subsidized by a competing LEC. If Global wants compensation for costs incurred in providing that service, it can charge the customer. This Commission has repeatedly

¹² *In re: Investigation Into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order on Reciprocal Compensation, Florida Public Service Commission, Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP at 33-34 (rel. Sept. 10, 2002), *aff’d*, Order Denying Motions for Reconsideration, Order No. PSC-03-0059-FOF-TP (rel. Jan. 8, 2003).

¹³ *Global NAPs Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South, Inc., f/k/a GTE South Incorporated*, Case No. 02-053 at 15-17 (rel. Aug. 22, 2002) (“*Verizon/Global IL Recommendation*”), *aff’d*, Arbitration Decision, Illinois Commerce Commission (rel. Oct. 1, 2002).

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held that FX-like traffic is not subject to reciprocal compensation.” *Id.* at 16 (footnote and citation omitted).

- ***Global/VZ OH Order (9/5/02)***.¹⁴ The *Global/VZ OH Order* found that Global should pay Verizon access charges for virtual NXX traffic and that Global could not charge reciprocal compensation. The Ohio Commission did not prohibit the “the use of virtual NXX, subject to the requirements for number pooling and portability,” but rather affirmed “that the intercarrier compensation for such calls [is] based on the geographic end points of the call as required by the Commission’s local service guidelines and as permitted by the FCC rules.” *Id.* at 10.
- ***US LEC/VZ SC Order (8/30/02)***.¹⁵ The *US LEC/VZ SC Order* pointed to traffic studies as the manner in which the parties should implement the law’s requirement to use geographic end points and not assigned NPA-NXX codes. According to the South Carolina Commission, “it would be deeply inconsistent with regulatory policy and basic fairness to require Verizon to *pay* [the CLEC], when Verizon continues to bear the same costs of originating the interexchange call, when Verizon is deprived of the toll charges that would ordinarily apply, and when [the CLEC] is already receiving compensation from its customers. [The CLEC’s] proposal thus amounts to an extraordinarily clear example of attempted regulatory arbitrage – that is, a situation in which the [CLEC] will earn revenues (both from its subscribers and from Verizon) while Verizon is forced to bear the bulk of the real costs of providing the service and is deprived of toll revenues to boot.” *Id.* at 54.
- ***Global/VZ PA Rec. Decision (10/10/02)***.¹⁶ The *Global/VZ PA Rec. Decision* recommends that the Pennsylvania Commission adopt Verizon’s proposal to base

¹⁴ *In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Case No. 02-876-TP-ARB, Panel Arbitration Report, at 11 (rel. July 22, 2002) (“*Verizon/Global OH Panel Report*”), *aff’d*, Arbitration Award, Public Utilities Commission of Ohio at 5 (rel. Sept. 5, 2002).

¹⁵ *In re Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.*, Docket No. 2002-181-C, Order No. 2002-619 (rel. Aug. 30, 2002)

¹⁶ *Petition of Global NAPs South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000 at 17 (rel. Oct. 10, 2002) (“*Verizon/Global PA Rec. Decision*”). This is not a final decision of the Pennsylvania Public Utility Commission.

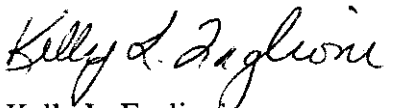
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intercarrier compensation on the end points of the traffic. The Pennsylvania arbitrator stated that “GNAPs’ retail marketing of a toll-free calling product to its customers in the guise of virtual NXX does not change the nature of the underlying interexchange traffic for purposes of determining intercarrier compensation . . . GNAPs should not be permitted to use Verizon’s network to provide toll-free interexchange calling to Verizon customers and then **charge** Verizon for that privilege.” *Id.*

- *Global/VZ NJ Rec. Decision (2/6/03)*:¹⁷ The *Global/VZ NJ Rec. Decision* recognizes that “calls that travel to points—both interstate and intrastate—beyond the local exchange” are “interstate or intrastate exchange access” to which reciprocal compensation does not apply. *Id.* at 11 (citing § 251(g) of the Act and the *ISP Order on Remand*). Accordingly, the *Global/VZ NJ Rec. Decision* finds that reciprocal compensation is not due on calls placed to virtual NXX numbers “as the calls do not terminate within the same local calling area in which the call originated.” *Id.* The *Global/VZ NJ Rec. Decision* recommends that the New Jersey Board direct “Global and other CLECs to cooperate with Verizon, whether through traffic studies or otherwise in developing a way for the parties to bill intercarrier compensation that is based on actual endpoints of the traffic.” *Id.*

Thank you for your consideration.

Sincerely yours,


Kelly L. Faglioni

cc: Ms. Marlene H. Dortch, Office of the Secretary (4 copies) (By Hand)
Jodie L. Kelley, counsel for WorldCom (Via Email and UPS-Overnight)
Mark A. Keffer, counsel for AT&T (Via Email and UPS-Overnight)
J.G. Harrington, counsel for Cox (Via Email and UPS-Overnight)

¹⁷ *Petition of Global NAPs, Inc. For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc., f/k/a Bell Atlantic -- New Jersey*, Docket No. TO02060320 at 9-11 (rel. Feb. 6, 2003) (“Verizon/Global NJ Rec. Decision”). This is not a final decision of the Board of Public Utilities of the State of New Jersey.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. **6142**

Petition of Global NAPs, Inc., for Arbitration Pursuant)	Hearing at
to § 252(b) of the Telecommunications Act of 1996 to)	Montpelier, Vermont
Establish an Interconnection Agreement with Verizon)	October 25,2002
New England Inc., d/b/a Verizon Vermont)	

Order entered 12/26/2002

PRESENT John Randall Pratt, Hearing Officer

APPEARANCES: James R. J. Scheltema, Director - Regulatory Affairs
for Global NAPs, Inc.

Gregory M. Kennan, Regulatory Counsel
for Verizon New England, Inc.,
d/b/a Verizon Vermont

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d/b/a Verizon Vermont

John J. Cotter
for the Vermont Department of Public Service

I. INTRODUCTION

On July 23, 2002, Global NAPs, Inc. ("Global" or "GNAPs") filed a petition with the Vermont Public Service Board ("PSB" or "Board") for arbitration of a proposed interconnection agreement with Verizon New England Inc., d/b/a Verizon Vermont ("Verizon" or "VZ"), pursuant to § 252(b) of the Telecommunications Act of 1996 ("the Act").¹ In its petition, Global submitted a list of nine issues that it asks the Board to resolve. Global also presented a draft interconnection agreement containing what it contends is the appropriate language for the Board to adopt in an approved interconnection agreement.

Verizon filed its response to Global's petition on August 14, 2002. In addition to stating its positions on the nine issues identified by Global, Verizon presented three additional issues that it contends are also in need of resolution through this arbitration. Verizon asserts in its response that Global's petition is facially and procedurally flawed, but allows that if the Board proceeds with the arbitration, it should approve the language Verizon submitted with its response in its own redlined draft interconnection agreement.

The Board agreed to arbitrate this dispute and, pursuant to 30 V.S.A. § 8, appointed me, John Randall Pratt, to serve as Hearing Officer. In this Proposal for Decision I recommend arbitration awards on each of the twelve issues submitted to the Board for resolution.

II. PROCEDURAL HISTORY

On August 21, 2002, I held a prehearing conference at which the parties established a schedule for the remainder of this Docket. The schedule included the filing of direct and rebuttal testimony, conducting of discovery, technical hearings, briefing, issuance of a proposal for decision, allowing for comments and oral arguments, leading to a final Board order by

1. 47 U.S.C. § 252.

December 26, 2002.² The resultant interconnection agreement is to be submitted for Board approval by February 10, 2003.³ At the prehearing conference, the parties agreed to limit the scope of discovery, and I granted two procedural motions: a waiver of Board Rule 2.201(C), as requested by Verizon;⁴ and approval of party status for the Vermont Department of Public Service ("Department").⁵

I convened an evidentiary hearing on October 25, 2002. By prior agreement, the parties limited testimony at the hearing to Issues 1-4, with argument on the remaining issues being made in prefiled testimony and briefs only.

III. JURISDICTION AND LEGAL FRAMEWORK

The Board's arbitration of interconnection issues is governed by the federal law that authorizes interconnection agreements. Under Subsection 251(a) of the Act, all telecommunications carriers, including Global and Verizon, have the duty to "interconnect directly or indirectly . . ."⁶ Upon receiving an interconnection request, an incumbent Local Exchange Carrier ("LEC") "may negotiate and enter into a [voluntary] binding agreement with

2. 47 U.S.C. § 252(b)(4)(C) requires that an arbitrator of interconnection agreements must render a decision within 9 months after the date on which the local exchange carrier received the request for negotiation. The parties originally agreed that February 13, 2002, would be used in this proceeding as the date negotiations began. The commensurate deadline for a decision, therefore, would have been November 12, 2002. Notwithstanding, the parties agreed to waive the statutory deadline for 45 days, allowing a decision to be rendered by December 26, 2002. I noted that it is not clear that the selection of this date is correct under statute. However, since the statutory deadline for a final decision has been waived, I made no determination regarding the appropriateness of the February 13, 2002, date.

3. Pursuant to 47 U.S.C. § 252(e)(4), the Board must then act to approve or reject the agreement within 30 days of its submission, or the agreement is deemed approved.

4. Global did not file a request to waive Rule 2.201(C), which allows attorneys admitted to practice and in good standing in states other than Vermont to appear before the Board provided they have co-counsel of record who is admitted to practice in Vermont.

5. While the Department has full party status in this proceeding, the term "parties" used in this proposal for decision generally refers only to Global and Verizon.

6. 47 U.S.C. § 251(a)(1) (Supp. 1996).

the requesting telecommunications carrier. . ." ⁷ The agreement "shall include a detailed schedule of itemized charges for interconnection and each service or network element included . . . [and] be submitted to the State commission under Subsection (e) of [Section 252]." ⁸

Between the 135th and 160th day following receipt of a request to negotiate terms **and** conditions of interconnection, either party to the negotiations may petition the State commission, which in Vermont is the Board, to arbitrate any open **issues**.⁹ **The** petitioners must file "all relevant documentation concerning: (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties." ¹⁰

Section 252 of the Act does not mandate any specific procedures for states conducting arbitrations. Because this arbitration is governed at least in part by federal law, it is arguably not a contested case under 3 V.S.A. § 801(b)(2). Nevertheless, the general procedures followed in a contested case are used in this arbitration, though simplified and expedited wherever possible. In Vermont, the "State commission" duties to adjudicate reside with the Board, while **the** Department represents Vermont's ratepayers before the Board.

The arbitration award does not end the Board's responsibilities. Any agreement negotiated under Section 252(a) must be submitted to the Board for review under Section 252(e). **The** Board must act to approve or reject the agreement within 30 days of its submission, or the agreement is deemed approved.

In its response and pleadings, Verizon complains that Global includes numerous cites and proposes many changes to contract language that are not directly related to the issues Global presented in its petition. Indeed, Section 252(b)(4) requires the State commission to ". . . limit its consideration of any petition . . . to the issues set forth in the petition and in the response" Global requests the Board find that Global's modifications to Verizon's Template Agreement are

7. *Id.* § 252(a)(1).

8. *Id.*

9. 47 U.S.C.A. § 252(b)(1).

10. 47 U.S.C.A. § 252(b)(2)(A).

reasonable and consistent with the law. To include an unresolved issue for arbitration, the petitioning party must provide all relevant documentation concerning each unresolved issue, including each party's position with respect to those issues. I do not find it appropriate **or** necessary to rule on specific contract language that has not been argued or briefed by the parties. Accordingly, I do not recommend that the Board address the specific contract provisions that, while they may be in dispute, were not squarely presented in the petition. Instead, this Proposal for Decision is limited to the twelve issues identified by the parties. If Global seeks resolution of **the** remaining disputed contract terms, Global will need to specifically request such a determination.

Global asks that the Board rule on the issues directly rather than ordering specific contract language "to avoid conflicts in the final contract language." I find that it is wholly consistent with the interconnection framework set out in the Act to recommend to the Board that it direct the parties to craft the appropriate, specific language to comply with the recommendations herein.

The parties are arbitrating most **or** all of the same issues in numerous other states. Both parties cite to decisions that support their positions on the issues. While I have reviewed many of the decisions rendered in similar arbitrations in other states, I note that the Vermont Board is not bound by such precedent.

Although Global currently has no customers physically located in Vermont, it is vital to keep in mind Section 252(i) of the Act, which mandates that ". . . any interconnection, service, or network element provided under an agreement approved under this section [shall be made available] to any other requesting telecommunications **carrier** upon the same terms and conditions as those provided in the agreement." This "opt-in" provision of the Act, therefore, potentially broadens the impact of the issues decided herein.

IV. UNRESOLVED ISSUES

Issue 1: SHOULD EITHER PARTY BE REQUIRED TO INSTALL MORE THAN ONE POINT OF INTERCONNECTION PER LATA?

Positions of the Parties

Although the parties have submitted this issue for arbitration, there is general agreement by the parties that GNAPs may have one point of interconnection ("POI") per Local Access and Transport Area ("LATA"),¹¹ and at any technically feasible point of its own choosing. Verizon would prefer multiple points of interconnection, in order to reduce its costs, but acknowledges that Global can opt for one POI. The Department also takes the position that Global may interconnect with Verizon at a single point.

The parties' positions diverge when the financial effects of such a choice are considered, in Issue 2, below.

Despite agreement on the principle of a single POI, Global proposes associated contract language which Verizon finds "unduly confusing and **ambiguous**."¹² Specifically, Verizon argues that Global's definition of POI includes a reference to the "network interface device" ("NID"), which is equipment located at retail customer premises and unrelated to interconnection. Further, Verizon contends that Global's proposed language does not **confine** Global's choice of a POI to a point within Verizon's network.

Discussion and Conclusion

Global is entitled to establish a single POI on Verizon's network where technically feasible. The Federal Communications Commission's ("FCC") Wireline Competition Bureau determined in its Virginia Arbitration **Order**¹³ that Competitive Local Exchange Carriers

11. There is only one LATA in Vermont. The LATA boundaries are essentially equivalent to the state boundaries.

12. Verizon Brief at 5.

13. In *the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731, Memorandum Opinion and Order (rel. July 17, 2002) ("**Virginia Arbitration Order**") at ¶ 52. The Virginia arbitration decision was issued by the Wireline Competition Bureau, and not the FCC itself. However, unless it is stayed, modified, or reversed by the full FCC, the Virginia decision ". . . shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions by the Commission." 47 U.S.C. § 155(C)(3).

("CLECs") have the right to a single POI. Elsewhere, the FCC has confirmed that an "ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per **LATA**."¹⁴ I recommend that the Board direct the parties to submit contract language that confirms Global's right to designate any technically feasible POI on Verizon's network in Vermont.

I agree with Verizon that Global's proposed contract language does contain problematic references and ambiguities. Global's language should be modified to remove references to the NID in its definition of a POI, and should clarify that Verizon is not required to interconnect with Global outside of Verizon's network.

Issue 2: SHOULD EACH PARTY BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH TRANSPORTING TELECOMMUNICATIONS TRAFFIC TO THE SINGLE POI?

Positions of the Parties

Global argues that each party should be responsible for the cost of delivering its own traffic on its side of the POI. Global also claims that Verizon's transport costs of delivering the traffic to a single POI are *de minimus*. It is important to note that Global contends that Verizon is prohibited from assessing charges for originating or transporting *local* calls to the POI. Global acknowledges that these prohibitions do not exist if the call in question is not local.¹⁵

Verizon asserts that Global should pay for the increased costs resulting from its decision to use Verizon's facilities to transport its traffic, and proposes an alternative method for assessing charges for such traffic. Verizon suggests financial responsibility for transport be based on virtual geographically relevant interconnection points (VGRIPs).

The Department recommends that "if Verizon or GNAPs originates traffic that would be subject to reciprocal compensation, then they are financially responsible for delivery of that traffic to the POI and are prohibited from assessing any charges against the terminating

14. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) at ¶ 112.

15. Department Brief at 5, citing tr. 10/25/02 at 71 (Lundquist).

carrier."¹⁶ In defining "traffic that would be subject to reciprocal compensation," the Department maintains that the local calling areas ("LCA"s) set forth by the Board in Docket 5670 should determine which calls are "local," subject to reciprocal compensation, and thus have transport paid for by each carrier on its side of the **POI**. This position is also relevant **to**, and discussed in greater detail in Issue 3, below.

Discussion and Conclusion

I find that each carrier should be responsible for its own costs of delivery to the **POI**. The FCC has said that carriers must transport **local** traffic to **the** POI without charge.¹⁷ Accordingly, I recommend that the Board rule in Global's favor on this issue.

Ultimately, this issue relates to traffic that would be rated as local.¹⁸ The FCC is silent regarding reciprocal compensation for intraLATA toll traffic. Therefore, **the** existing toll/access charge regime still applies to that traffic. As to traffic that would normally be subject to reciprocal compensation, the FCC's Rule 703(b)¹⁹ holds sway on the issue of a carrier's financial responsibility for the local calls its own customers originates, and Global's argument on **Issue 2** comports with the Rule. Rule 703(b) states: "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network" Additionally, this financial arrangement **is** further supported by the FCC's *Local Competition Order*, which states:

The interconnection obligation of section 251(c)(2) . . . allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent

16. Department Brief at 7.

17. 47 C.F.R. § 51.703(b); *see also Virginia Arbitration Order* at ¶ 52.

18. The terms "local traffic," "intra-exchange traffic," and "reciprocal compensation traffic" are generally synonymous. As Global states: "As [intra-exchange traffic] is telephone exchange traffic and neither toll traffic **nor** traffic routed to an information service provider, it **is** reciprocal compensation traffic." Global Brief at 18 (footnote 42).

19. 47 C.F.R. § 51.703(b).

LECs, thereby *lowering the competing carriers cost of* among other things, *transport* and termination of traffic.²⁰

The Wireline Competition Bureau also supports Global's position:

[U]nder [the Commission's] rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.²¹

This conclusion is also good public policy, in that it encourages efficiency in the delivery of all carrier's traffic. When each carrier pays the costs of delivering traffic on its side of the POI, it has the incentive to employ the most cost-effective means available to it to handle this traffic. I reach this conclusion recognizing that delivery to a single POI may increase costs to the network; using Global's current POI as an example, this would necessitate the transport of calls to Brattleboro rather than locally. But, from a policy perspective, it allows competitive entry, without necessitating a full build-out of competing transport.

This decision is tied to Issues 3 and 4, by not requiring payment to Verizon **for** transporting traffic to Global's **POI**. However, my recommended decisions on those issues ensure that Global cannot exploit this ruling by taking advantage of its non-payment to disrupt the existing toll/local distinction, thus having Verizon subsidize its competitive entry.

For the same reasons (FCC rulings and public policy), there should be no payment made to Verizon to transport traffic that is ISP-bound. Additionally, I note that the FCC's current view is that ISP-bound traffic is *interstate*.²² If that classification holds, FCC Rule 703(b) would not apply (since interstate traffic is not subject to reciprocal compensation), but the Board could require payment of access compensation on this seemingly interstate traffic. At the present time,

20. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-98, *First Report and Order*, 11 F.C.C. Rcd 15499 (1996) ("*Local Competition Order*") at ¶ 172 (emphasis added).

21. *Virginia Arbitration Order* at ¶ 52

22. *In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 01-131.

the Board has not implemented such a policy, nor do I recommend such a result. However, if Global were permitted to use "Virtual NXX" (discussed in Issue 4, below), it would conceivably be appropriate to require payments to Verizon to compensate it for the added costs of transporting such "interstate" traffic, that would otherwise be toll traffic.

The parties raised additional arguments, which I will address briefly. Verizon's VGRIPs proposal is not without merit. Conceptually, VGRIPs provide an equitable sharing of the costs of transport. At the present time, however, the VGRIPs model is inconsistent with current intercarrier compensation rules, could alter the toll/local distinction in Vermont;²³ and would require a new and untested costing and billing system to be developed and implemented.

Global's "*de minimus*" argument is irrelevant in resolving this issue, inasmuch as the actual *costs* of transport are not in dispute. Even if such analysis were relevant here, Global's analysis is unreliable because it does not estimate the *long-run* incremental costs for transport, and because it is based on data obtained from other states, which may or may not be applicable in Vermont. Further, if any of Verizon's Board-approved rates are questioned, Global (or any other carrier) is entitled to dispute that rate before the Board.

Issue 3: SHOULD VERIZON'S LOCAL CALLING AREA BOUNDARIES BE IMPOSED ON GLOBAL, OR MAY GLOBAL BROADLY DEFINE ITS OWN LOCAL CALLING AREAS?

and

Issue 4: CAN GLOBAL ASSIGN TO ITS CUSTOMERS NXX CODES THAT ARE "HOMED" IN A CENTRAL OFFICE SWITCH OUTSIDE OF THE LOCAL CALLING AREA IN WHICH THE CUSTOMER RESIDES?

Issues 3 and 4: Background

Issues 3 and 4 both relate to the distinction between local traffic and toll traffic, both from the perspective of the retail customer and for purposes of intercarrier compensation. In Issue 3, the parties ask the Board to determine whether the distinction between toll and local traffic for purposes of intercarrier compensation should be defined by the local calling area of the company

23. See Issue 3.

serving the customer that originates a telephone call. In Issue 4, the parties ask the Board to determine whether a company terminating a call for a customer may use the call routing arising from the assignment of NXX's²⁴ to treat a call as local, even though it may physically terminate in a location that would be considered toll traffic based upon the origination and termination points. Both issues have significant implications for the existing distinctions between toll and local traffic; therefore, it is appropriate to start by examining the current distinctions and the policy rationales for those choices.

Retail pricing of intraLATA telecommunications services has historically differentiated local traffic from what is generally referred to as interexchange traffic.²⁵ Local calls are those originated and terminated within a customer's local calling area.²⁶ Interexchange or toll calls are those that are terminated outside of the designated local calling area in which the call originated. From the retail customer's perspective, the distinction defines the rates that apply as well as the manner in which the customer must dial the call recipient. In Vermont, local traffic is subject to payment of local measured service ("LMS"). Verizon's LMS rates are 2.2 cents per minute during peak hours and 0.5 cents per minute off-peak.²⁷ Toll rates are much higher, ranging from 7 cents to 16 cents (depending upon the time of day), although many customers subscribe to custom calling plans that lower these rates.²⁸

Wholesale pricing of telecommunications services also varies by whether the call is local or toll. Under the Act, when a local call terminates on the network of another carrier, the

24. *Newton's Telecom Dictionary* defines an NXX as follows: "In a seven digit local phone number, the first three digits identify the specific telephone company central office which serves that number." *Newton's Telecom Dictionary*, 16th Ed, at 601.

25. Lundquist pf. at 62.

26. Lundquist pf. at 60. At one time, this was the customer's exchange and reflected the significant cost differences in the network that occurred when a company had to connect to another exchange. Over time, customer demand has led to an expansion of local calling areas so that many local calls are, in fact, between exchanges (i.e., rate centers). In addition, as is discussed in more detail below, modernization of the telecommunications network has reduced, if not eliminated, many of the cost differences between local traffic and interexchange traffic.

27. Verizon PSB VT No. 20, Part M, Section 1.5.3.

28. Verizon PSB VT No. 20, Part M, generally.

originating carrier pays reciprocal compensation to the carrier that terminates the call.²⁹ By contrast, when a customer places a toll call, the customer's interexchange carrier ("IXC") pays originating access to the customer's local exchange carrier and terminating access to the carrier that completes the call.

As a matter of law, in Vermont, toll and local calls are also distinguished by the manner in which a customer dials the calls. For local calls, the customer dials only the seven digit phone number of the customer. By contrast, when making a toll call, **the** customer dials eleven digits, preceding the telephone number by 1-802.³⁰ The eleven digit number ensures that customers **are** aware when placing a toll call that the call will incur toll rates.

These pricing and dialing distinctions rely upon how traffic is determined to be local **or** toll. For the incumbent local exchange carriers, **the** local calling areas have been established by the Board, most recently in Docket 5670.³¹ In that case, the Board expanded the local calling areas for all telephone exchanges in the state, **so** that customers can, at a minimum, reach any exchange within **three** miles of their own exchange without incurring toll charges.

Competitive local exchange carriers presently are free to select their own local calling area.³² Thus, a CLEC, such **as** Global, may choose a larger or smaller local calling area for its customers than **the** ILECs. However, the Board has also previously ruled that **the** CLEC's selection of **the** local calling area does not determine the intercarrier compensation that applies (i.e., whether the call is subject to reciprocal compensation or access charges). Rather, in Docket 5713, the Board concluded that intercarrier compensation would depend upon **the** ILEC's local calling area in the exchange in which the calling customer is located

Rates for compensation among carriers will be based upon the local calling areas set out in Docket 5670, but dialing patterns can be varied according to the boundaries of the LCAs that each provider offers on a retail basis. This means that the distinction between local and toll calling

29. 47 U.S.C. § 251(b)(5)

30. In Docket 5634, the Board concluded that retaining the initial "1" as a toll indicator was essential to inform customers, and thus established the current dialing arrangements. Order of 7/14/93 at 4647.

31. Orders of 9/6/95 and 7/21/97.

32. Docket 5713, Order of 2/4/99 at 113.

— seven digits versus one plus ten — *can* be maintained on a retail basis, even when an LCA does not conform to the Docket 5670 areas.³³

For example, a CLEC could choose to define calls from Montpelier to Brattleboro as local for its customers, charging those customer **LMS** rather than toll rates (even though this call would be toll for Verizon's customers). Under the Board's prior orders, the CLEC would be **free** to do so, but would still be required to pay Verizon terminating access if the call was completed to a Verizon customer.³⁴

Issue 3: SHOULD VERIZON'S LOCAL CALLING AREA BOUNDARIES BE IMPOSED ON GLOBAL, OR MAY GLOBAL BROADLY DEFINE ITS OWN LOCAL CALLING AREAS?

Positions of the Parties

In this proceeding, Global requests that the Board modify the policy enunciated in Docket 5713. Specifically, Global requests that the Board permit Global to define the entire state **as** its local calling area **and** to have intercarrier compensation based upon the calling area of the customer originating the telephone call.

In support of its request, Global raises several arguments. First, Global, relying upon a recent FCC Order,³⁵ states that when it, as the originating company, classifies a call as local, by

33. *Id.*

34. *Id.* As the Board explained in footnote 420:

If a customer purchases a local service product from a provider, incumbent or competitor, whose LCA differs from that of Docket 5670, that customer will be able to make calls within that designated area by dialing only seven digits. If he calls outside the area, he will be required to dial eleven digits. Compensation for exchanging such traffic among carriers, however, will be billed with reference to the Docket 5670 LCAs. What this means is that, if a customer who has purchased an LCA that is more expansive than the Docket 5670 LCA to which he would be entitled makes a call that, for retail purposes, is billed to him as a local call, but is, according to Docket 5670, a toll call, then his provider will pay toll transport and access charges, if applicable, to terminate that call (such charges may not apply, depending on whose facilities are used to transport and deliver the call).

35. Global cites to ¶ 46 of the FCC's Order in *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("*ISP Remand Order*").

rule that call becomes subject to reciprocal compensation and not access charges. Second, Global argues that LATA-wide local calling areas impose no additional costs on Verizon. Therefore, argues Global, there is no reason for calling areas to be smaller than an entire state. Third, Global asserts that permitting statewide local calling would stimulate competition. Finally, Global states that statewide local calling is consistent with decisions in other states.

Verizon requests that the Board not modify the policy. Verizon states the FCC has made clear that there continues to be a distinction between local and toll traffic and that the state commissions have the authority to determine which intrastate traffic falls into each category. Verizon also argues that the ILEC local calling area should continue to be used to distinguish between toll and local traffic. Verizon asserts that Global's proposal is essentially statewide flat rated toll service.

The Department also supports retention of the Board's policy from Docket **5713** at the present time, stating that Global has not presented sufficient basis for altering that policy.

Discussion and Conclusion

I recommend that the Board affirm the decision made in Docket **5713** — Global and other CLECs may choose their own local calling areas for determining retail rates and dialing patterns, but the intercarrier compensation for those calls will be based upon the distinction between local calls and toll calls for Verizon and other ILECs as established in Docket **5670**. Allowing Global to have intercarrier compensation based upon the local calling area it chooses has the potential to undermine the entire distinction between local and toll embedded in current rate structures.³⁶ For several reasons, I do not find it reasonable to authorize such a wholesale change in the context of this arbitration.

As explained above, the Board has established the local calling areas that apply to Verizon. Allowing Global to define its own calling areas for purposes of intercarrier compensation would provide it a competitive advantage in offering its services — not only in

36. Haynes pf. at 7-9.

competition with Verizon, but also with every MC. Global would pay Verizon 0.8 cents per minute while its competitors would have to pay Verizon approximately **2** cents per minute to complete the same call, *solely* because Global stated that the call was not toll.³⁷ Faced with competition and lost toll and access revenue, Verizon may be forced to expand its local calling areas to match those of Global, and could **seek** to increase local exchange rates to compensate for lost toll revenue. Over time (and not necessarily a long time), this could lead to an elimination of the existing differences between toll and local service and higher basic rates.

Changes such **as** these to the rate structure in Vermont, if they occurred, could have a significant effect on a large class of customers. In particular, low volume **users** could *see an* increase in their costs of telephone service. This is not certain; however, it is not appropriate to take steps that lead to such significant consequences without a more thorough examination of the costs and benefits.

Global has argued that the effect upon Verizon would be minimal, citing the fact that Verizon handles the call in the same manner once it receives the call whether it is classified as local or toll. In terms of call routing, this may depend upon the network configuration that the parties ultimately adopt. Assuming Global and Verizon agree on a single point of interconnection, then the call routing from that point would be the same. However, focus solely on **the** routing of **the** call is not sufficient; in order to sustain Global's claim that Verizon **is** not harmed, I would need to find that the payment of reciprocal compensation to complete the calls adequately covers Verizon's **costs**. For example, under Global's proposal, a call originated by **a** Global customer any place in the state to Burlington would be local. Under the proposed network configuration, Verizon would need to transport **the** call from Brattleboro to Burlington and then terminate it at the customer's premises. Global has not presented any evidence showing that Verizon's costs of completing the call would be fully covered by the 0.8 cents per minute charge for reciprocal compensation.³⁸ It is possible that the costs of completing calls now

37. In Docket 616716189, the Board directed Verizon to establish end-to-end access rates of approximately 4 cents per minute; terminating access would amount to about half of the end-to-end rate. Order of 3/24/00.

38. Global did present evidence that transport of traffic has minimal cost. Lundquist *pf.* at 53. Although Global methodology may not accurately capture the costs of transport, it is clear that the deployment of fiber networks and improved multiplexing capabilities have significantly reduced the costs of interoffice transport, so that distance is a

classified as toll could exceed the reciprocal compensation figure. If so, Global's proposal would have Verizon's customer subsidize Global's competitive entry by providing below cost call termination services.³⁹ Thus, I do not accept Global's argument that allowing Global to define its own local calling areas has no impact on Verizon.

Global's cost claims also fail to recognize the significant impact of its proposal upon the Independent telephone companies in Vermont. Implementation of Global's statewide local calling areas would replace the terminating access they now receive with no revenue.⁴⁰

More significantly from a cost perspective, Global's proposal would produce lost revenue to Verizon and the ILECs, as explained above, through the erosion of toll revenue, thereby effectively undermining the existing toll/local distinction. Global suggests that such lost revenues are simply the effect of competition. This assertion ignores the fact that the competition is predicated upon Global's offering something that Verizon presently cannot offer. As such, the lost revenues would be the result of competition where the ILEC has an unfair disadvantage (unless the Board authorizes Verizon to alter its local calling areas). The Board has consistently favored competitive entry and has moved to remove barriers to fair competition; Global's proposal, however, would provide competitors with an advantage, something the Board has not previously authorized.

Global also argues that the FCC has effectively decided the issue in the *ISP Remand Order*, permitting Global to define local calling areas and have intercarrier compensation based upon that decision. In the *ISP Remand Order*, the FCC reconsidered the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to ISPs.⁴¹

less significant component of the total cost. But call completion for calls now rated as toll also involves tandem and local switching, as well as other costs. These costs are incorporated into the access charges that IXCs pay LECs to terminate toll calls. Global presented no evidence quantifying these costs,

39. The evidence in the record does not allow the Board to determine whether such subsidization would exist

40. Global could alter its proposal to allow statewide calling, except for calls terminating at customers of independent telephone companies. Even though the Board has granted CLECs substantial latitude in setting prices and services, such a proposal may well be unjustly discriminatory.

41. *ISP Remand Order*, ¶ 1. The FCC's previous rule had been reversed by the Court of Appeals for the District of Columbia Circuit. *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C.Cir. 2000).

Specifically, that Order focused on calls to ISPs within a local calling area for which **the** terminating party would otherwise receive reciprocal compensation payments, ruling that this traffic was **interstate**.⁴² As part of that Order, the FCC modified 47 C.F.R. § 51.701(b) to clarify that traffic to ISPs was not eligible for reciprocal compensation. According to Global, the FCC also modified the **rule** in a manner that allows the CLEC's definition of local calling area to govern intercarrier compensation. I find this argument unconvincing.

First, I note that the Order is limited to ISP-bound traffic. There is no discussion of changes to the rules applicable to other traffic or even to ISP-bound traffic that originates outside of the ISP's local calling area. It would be surprising to have such a global change in the state's authority altered without any mention.⁴³

Second, the FCC has made clear that "state commissions have authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for those areas where the LECs' service areas do not overlap."⁴⁴ In its recent arbitration in Virginia, the FCC reiterated that this distinction is for determination by the states and specifically declined to disturb the existing **distinction**.⁴⁵ In fact, in the Virginia arbitration, the FCC rejected a proposal that would, like Global's proposal, have made all calls within the LATA subject to reciprocal compensation rather than access charges. If Global's arguments concerning the FCC's earlier *ISP Remand Order* were correct, the subsequent decision would have been inconsistent.

42. The FCC's Order remains in effect, even though the Court of Appeals for the District of Columbia Circuit rejected the FCC's rationale and remanded the case to the FCC. *Worldcom, Inc. v. FCC*, No. 01-1218, Slip. Op. (D.C. Cir. May 3, 2002) at 6-7.

43. I **note** that by the logic of Global's argument, Global could declare the entire nation to be its local calling area, thereby eliminating both originating and terminating access for those calls too and effectively eliminating toll **as** a service.

44. Local Competition First Report and Order, 12 FCC Rcd. at 16013, para. 1035.

45. *In the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731, Memorandum Opinion and Order (rel. July 17, 2002) ("*Virginia Arbitration Order*"), ¶ 549.

Global also asserts that allowing statewide local calling is necessary to allow it to compete with Verizon by offering different calling areas. The Board has long favored competitive entry in Vermont and has taken steps to enable competition. However, as discussed above, the competition sought by Global is not based upon a level playing-field, but would provide a competitive advantage to Global unless, and until, the Board permits Verizon to modify its calling areas. Such unequal competition does not benefit ratepayers as a whole and should be discouraged.

Finally, Global argues that statewide local calling is good public policy. There may be some merit to this argument. However, this is not the appropriate proceeding in which to make such a far-reaching change. The Board would need to more thoroughly review the costs and benefits of eliminating intraLATA toll traffic within the state.⁴⁶ There is insufficient evidence of these costs and benefits here.

In summary, I conclude that intercarrier compensation should continue to be based upon the existing local calling areas as established in Docket **5670**.

Issue 4: CAN GLOBAL ASSIGN TO ITS CUSTOMERS NXX CODES THAT ARE "HOMED" IN A CENTRAL OFFICE SWITCH OUTSIDE OF THE LOCAL CALLING AREA IN WHICH THE CUSTOMER RESIDES?

Background

Issue 3 related to the treatment of outgoing calls and whether intercarrier compensation should be based upon a calling party's local calling area as defined by its LEC. In issue 4, the parties ask the Board to examine a different aspect of the present distinction between toll and local traffic embedded in the telecommunications network. Global and Verizon disagree over whether it is permissible to use what is known as "virtual NXX" or "VNXX" whereby a call

⁴⁶. In large part, a statewide local calling area is likely to shift costs from those who use toll services to those who do not. The Board **would** need to explore the magnitude of these cost shifts, the benefits associated with them, and the possibility that customers that presently have low toll volumes may nonetheless benefit from being able to have all calls within the state as local. For example, Mr. Lundquist observes that 40% of respondents to a Department survey supported statewide local calling at a higher rate. The majority did not.